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MICRO FOCUS SOFTWARE LLC
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12 **IN THE UNITED STATES BANKRUPTCY COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA -**
14 **SAN FRANCISCO DIVISION**

15 In re:
16 PG&E CORPORATION,
17
18 -and-
19 PACIFIC GAS AND ELECTRIC COMPANY,
20 Debtors.
21

- 22 ☐ Affects PG&E Corporation
23 ☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors.

24 *All papers shall be filed in the Lead Case*
25 *No. 19-3088(DM)*
26
27
28

Bankruptcy Case No. 19-30088 (DM)

Chapter 11
(Lead Case)

(Jointly Administered)

**OBJECTION OF MICRO FOCUS
SOFTWARE LLC TO
DEBTORS' NOTICE OF PROPOSED
ASSUMPTION OF
EXECUTORY CONTRACTS AND
PROPOSED CURE AMOUNTS**

RE: Docket 6320 and 7037

Date: May 27, 2020
Time: 10:00 a.m. (P.T.)
Location: Tele. Appearances only
450 Golden Gate Ave.
18th Fl., Courtroom 17
San Francisco, CA 94102

Micro Focus Software LLC, formerly known as EntIT Software LLC (“Micro Focus”), a creditor in the above-captioned jointly administered chapter 11 cases of PG&E Corporation and Pacific Gas and Electric Company (the “Debtors”), by and through undersigned counsel, submits this objection (the “Objection”) to the proposed cure amount included in Exhibit B to the Notice of Filing of Plan Supplement in Connection with Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 [Dkt. No. 7037] (the “Notice”). In support thereof, Micro Focus respectfully submits as follows:

BACKGROUND

1. On January 29, 2019 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby initiating their respective chapter 11 bankruptcy cases that are now pending before this Court. The Debtors continue to operate their businesses as debtors-in-possession.

2. Micro Focus and the Debtors are parties to that certain HP Enterprise License Agreement executed on December 26, 2013 (the “Original ELA”), as supplemented by an Addendum One executed on December 22, 2016 (the “Addendum”) and an End of Term Certification dated April 23, 2018 (the “EOT Certification,” and together with the Original ELA and the Addendum, the “ELA”). The ELA is made subject to and governed by the terms of the HP Customer Terms – Portfolio dated June 27, 2013 (the “Background Terms”).

3. The ELA grants the Debtors a non-exclusive perpetual license to use certain software products and provides for support services to be performed with respect to the software. The ELA contains an activation period during which the Debtors could purchase any quantity of software licenses. At the end of the activation period, which expired on December 31, 2017, the software licenses activated by the Debtors during the term were set forth in the EOT Certification, which reflects the “Final Configuration” of software licenses purchased by the Debtors. As the activation term has expired, the Debtors can no longer activate additional software products; however, the Final Configuration of software licenses and the related support continue to be governed by the ELA.

4. On January 2, 2019, the Debtors issued two purchase orders to Micro Focus for

1 services to be performed on the software licenses with a term of January 1, 2019 to
2 December 31, 2021 (the “Purchase Orders”).

3 5. On May 1, 2020, Debtors filed the Notice, which includes as Exhibit B a schedule
4 of executory contracts to be assumed and the Debtors’ determination of cure amounts for each.
5 Exhibit B identifies the ELA and provides a proposed cure amount of \$0.00 (the “Proposed Cure
6 Amount”). Dkt. No. 7037 at 465 (Match IDs 1016320 and 1005011).

7 6. While the Purchase Orders are not expressly identified in Exhibit B to the Notice
8 as executory contracts to be assumed by the Debtors, they form part of a single agreement—the
9 ELA. Furthermore, Exhibit B provides that all executory contracts not expressly rejected shall
10 be deemed assumed under the plan. Dkt. No. 7037 at 14-15. As a result, Micro Focus
11 presumes that the Debtors intend to assume the Purchase Orders, which provide for ongoing
12 software support, in connection with the ELA.

13 7. Micro Focus agrees to the Debtors’ assumption of the ELA and Purchase Orders;
14 however, Micro Focus disputes the Proposed Cure Amount of \$0.00. Micro Focus’s books and
15 records reflect that \$223,161.97 in prepetition amounts are due and owing under the ELA and
16 the Purchase Orders, comprised of the following:

17 a. Micro Focus is owed \$133,378.78 for support services provided to the
18 Debtors during 2017 pursuant to the Addendum to the ELA.

19 b. Micro Focus is owed \$86,166.63 for support services performed from
20 January 1, 2019 to January 29, 2019 (the Petition Date) pursuant to the ELA and the Purchase
21 Orders.

22 c. Micro Focus is owed \$3,616.56 performed from January 1, 2019 to
23 January 29, 2019 (the Petition Date) pursuant to the ELA and a purchase order with a term of
24 January 1, 2019 to December 31, 2019.

25 **OBJECTION**

26 8. Micro Focus has no objection to the assumption of the ELA and the Purchase
27 Orders, provided the proper cure amount is paid. Accordingly, Micro Focus files this Objection
28 objecting to the Proposed Cure Amount set forth in Exhibit B to the Notice.

1 9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under
2 the ELA and the Purchase Orders in connection with any proposed assumption. In this case, the
3 Debtors' Proposed Cure Amount of \$0.00 fails to cure the existing defaults under the ELA and
4 the Purchase Orders.

5 10. The correct cure amount is \$223,161.97 for prepetition payment defaults under
6 the ELA and the Purchase Orders.

7 11. Nothing herein may be construed as a waiver of Micro Focus's rights or
8 remedies, all of which are reserved.

9 WHEREFORE, Micro Focus requests that this Court enter an order (i) sustaining this
10 Objection; (ii) adjusting the Proposed Cure Amount as set forth herein; (iii) requiring, as a
11 condition to the Debtors' assumption of any of Micro Focus's contracts, that the Debtors pay all
12 unpaid prepetition and post-petition amounts accrued thereunder through the effective date of
13 the assumption; and (iv) granting such other and further relief as is just and proper.

14 Dated: May 15, 2020.

Respectfully submitted,

VENABLE LLP

/s/ Melissa C. McLaughlin

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Darek S. Bushnaq (PHV application forthcoming)

Jessica Dillon (PHV application forthcoming)

Attorneys for Micro Focus Software LLC